

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

MAURICE WILSON v. JAMES FORTNER, WARDEN

Direct Appeal from the Circuit Court for Hickman County
No. 08-5033C Robbie Beal, Judge

No. M2008-01380-CCA-R3-HC - Filed January 8, 2009

This matter is before the Court upon the State's motion to affirm the judgment of the trial court by memorandum opinion pursuant to Rule 20 of the Rules of the Court of Criminal Appeals. The Petitioner, Maurice Wilson, appeals the trial court's dismissal of his second petition for habeas corpus relief. Upon a review of the record, we are persuaded that the trial court correctly found that the Petitioner is not entitled to habeas corpus relief. This case meets the criteria for affirmance pursuant to Rule 20 of the Rules of the Court of Criminal Appeals. Accordingly, the State's motion is granted, and we affirm the judgment of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed
Pursuant to Rule 20, Rule of the Court of Criminal Appeals

ROBERT W. WEDEMEYER, J., delivered the opinion of the court, in which DAVID H. WELLES and JERRY L. SMITH, JJ., joined.

Maurice Wilson, Whiteville, Tennessee, Pro Se.

Robert E. Cooper, Jr., Attorney General and Reporter; Michael E. Moore, Solicitor General; Benjamin A. Ball, Assistant Attorney General; Kim Helper, District Attorney General, for the Appellee, State of Tennessee.

MEMORANDUM OPINION

The record reflects that the Petitioner is currently incarcerated for convictions he received in 1985, when he pled guilty to armed robbery and felony murder. *State v. Maurice Wilson*, No. 86-94-III, 1986 WL 12474, at *1 (Tenn. Crim. App., at Nashville, Nov. 5, 1986), *perm. app. denied* (Tenn. Jan. 5, 1987). The trial court sentenced the Defendant to two consecutive life sentences. *Id.* The Petitioner appealed his convictions, arguing that they were barred by the double jeopardy clause and that the trial court erroneously ran his sentences

consecutively. *Id.* This Court affirmed his convictions and sentence on appeal. *Id.* The Tennessee Supreme Court denied the Petitioner's application for permission to appeal. *Id.*

On April 12, 1993, the Petitioner filed a petition for habeas corpus relief alleging that his sentence was void. *Maurice Wilson v. State*, No. 01C01-9310-CR-00352, 1994 WL 151322, at *1 (Tenn. Crim. App., at Nashville, Apr. 28, 1994), *perm. app. denied* (Tenn. Aug. 29, 1994). In support of his petition, he claimed: (1) that he did not knowingly, understandingly, or voluntarily enter his guilty plea; (2) that his trial counsel did not appeal to the Tennessee Supreme Court pursuant to Rule 11 of the Tennessee Rules of Appellate Procedure; and (3) that his counsel was ineffective in explaining his rights regarding pleading guilty and in failing to file an appeal. *Id.* The trial court treated the petition as a petition for post-conviction relief, and it dismissed the petition as time barred. *Id.* The Petitioner appealed, and this Court affirmed the trial court's dismissal of the petition. *Id.* The Tennessee Supreme Court denied permission to appeal. *Id.*

In August 2000, the Petitioner filed a "motion" in the trial court that stated that he had not been provided a transcript of the guilty plea submission hearing and asked the trial court to order a transcript or to grant a new trial. *Maurice Wilson v. State*, No. 01C01-9708-CR-00348, 2000 WL 14707, at *1 (Tenn. Crim. App., at Nashville, Jan. 7, 2000), *perm. app. denied* (Tenn. May 15, 2000). The trial court found the motion failed to allege matters that would allow a reopening of the prior petition and that all issues regarding the Petitioner's guilty pleas had been previously determined, waived, or barred by the statute of limitations. *Id.* The Petitioner appealed, and this Court affirmed the trial court's judgment pursuant to Rule 20 of the Rules of the Court of Criminal Appeals. *Id.* The Tennessee Supreme Court denied permission to appeal. *Id.*

On May 6, 2008, the Petitioner filed the petition for writ of habeas corpus relief that is the foundation of this appeal. In the petition, the Petitioner alleged that his sentence is illegal. He asked the court to note that there is no citation to the Tennessee Code Annotated on the second count of his indictment. The Petitioner attached to the petition his original indictments for felony murder and robbery. In Count one, the Petitioner is charged with a murder that occurred "during the perpetration of the robbery described in Count two of this indictment." The felony murder statute is clearly referenced. In the indictment for Count two, the Petitioner is charged with "unlawfully, feloniously, and violently" stealing, taking, and carrying away from the victim a billfold and money contained therein.

The Petitioner further alleged in his petition that he agreed to accept one life sentence for felony murder and that Count two, the robbery charge, would not be "brought up." The felony murder sentence was to run consecutively to another life sentence that the Petitioner was already serving. The Petitioner asserted that a "fraud" was perpetrated on the court when he pled guilty on December 13, 1985, which resulted in his being sentenced to serve two life sentences consecutive to one another. Further, he asserted that he was under heavy sedation prescribed by a doctor and that he can not say with specificity what occurred after September 23, 1985. The Petitioner asserted that he was illegally incarcerated because he was serving two life sentences rather than one life sentence.

The State filed a motion to dismiss the Petitioner's petition, in which it alleged first that the Petitioner failed to follow the mandatory procedural requirements of a habeas corpus petition. Specifically, the State asserted that the Petitioner failed to state that this matter had not already been adjudged upon a prior proceeding of the same character and that he incorrectly stated that this was his first application for habeas corpus relief. The State cited this Court's decision on the Petitioner's previous petition for habeas corpus relief. Further, the State asserted that beyond the procedural failings, the petition also lacked substantive merit. Any claim, the State said, that the Petitioner's guilty plea was not voluntarily entered rendered the judgment voidable and not void.

The habeas corpus court dismissed the petition without holding a hearing. It is from this judgment that the Petitioner now appeals.

II. Analysis

On appeal, the Petitioner complains that the habeas corpus court erred when it dismissed his petition without holding a hearing or providing a basis for the dismissal. The Petitioner asks this Court to set aside the dismissal and remand the case to the habeas corpus court for a ruling on the merits of the petition. In the alternative, he asks this Court to rule on the merits of the petition. The State filed a Rule 20 motion alleging, as it had in the court below, that the Petitioner failed to follow the mandatory procedural requirements necessary for filing a petition for writ of habeas corpus when he failed to state this matter had not already been adjudged upon in a prior proceeding of the same character and when he incorrectly stated that this was his first application for a writ of habeas corpus. The State also argues that any claim that the Petitioner's guilty plea was not voluntarily entered renders his guilty plea voidable and not void; therefore, he would not be entitled to habeas corpus relief.

Whether habeas corpus relief should be granted is a question of law. *Edwards v. State*, No. M2006-01043-SC-R11-HC, -- S.W.3d --, 2008 WL 4248714, at *2 (Tenn. Sept. 18, 2008). Thus, we apply de novo review and afford no presumption of correctness to the findings and conclusions of the court below. *Summers v. State*, 212 S.W.3d 251, 255 (Tenn. 2007); *Hogan v. Mills*, 168 S.W.3d 753, 755 (Tenn. 2005).

Article I, section 15 of the Tennessee Constitution guarantees the right to seek habeas corpus relief. Tenn. Const. art. I, § 15; *Faulkner v. State*, 226 S.W.3d 358, 361 (Tenn. 2007). Although the right is guaranteed in the Tennessee Constitution, the right is governed by statute. T.C.A. § 29-21-101 (2006) *et seq.* Although there is no statutory limit preventing a habeas corpus petition, the grounds upon which relief can be granted are very narrow. *Edwards*, -- S.W.3d --, 2008 WL 4248714, at *3; *May v. Carlton*, 245 S.W.3d 340, 344 (Tenn. 2008). “[A] petition for writ of habeas corpus may not be used to review or correct errors of law or fact committed by a court in the exercise of its jurisdiction.” *Edwards*, -- S.W.3d --, 2008 WL 4248714, at *3 (quoting *State ex rel. Holbrook v. Bomar*, 211 Tenn. 243, 246, 364 S.W.2d 887, 888 (1963)). It is the burden of the petitioner to demonstrate by a preponderance of the evidence that “the sentence is void or that the confinement is illegal.” *Wyatt v. State*, 24 S.W.3d 319, 322 (Tenn. 2000). In other words, the very narrow grounds upon which a habeas corpus petition can

be based are as follows: (1) a claim there was a void judgment which was facially invalid because the convicting court was without jurisdiction or authority to sentence the defendant; or (2) a claim the defendant's sentence has expired. *Stephenson v. Carlton*, 28 S.W.3d 910, 911 (Tenn. 2000); *Archer v. State*, 851 S.W.2d 157, 164 (Tenn. 1993). "An illegal sentence, one whose imposition directly contravenes a statute, is considered void and may be set aside at any time." *May v. Carlton*, 245 S.W.3d at 344 (citing *State v. Burkhardt*, 566 S.W.2d 871, 873 (Tenn. 1978)). In contrast, a voidable judgment is "one that is facially valid and requires the introduction of proof beyond the face of the record or judgment to establish its invalidity." *Taylor*, 995 S.W.2d at 83; see *State v. Richie*, 20 S.W.3d 624, 633 (Tenn. 2000).

If after a review of the habeas petitioner's filings the habeas corpus court determines that the petitioner would not be entitled to relief, then the petition may be summarily dismissed. T.C.A. § 29-21-109, *State ex rel. Byrd v. Bomar*, 381 S.W.2d 280, 283 (Tenn. 1964). Further, a habeas corpus court may summarily dismiss a petition for writ of habeas corpus without the appointment of a lawyer and without an evidentiary hearing if nothing on the face of the judgment indicates that the convictions addressed therein are void. *Passarella v. State*, 891 S.W.2d 619, 627 (Tenn. Crim. App. 1994), *superceded by statute as stated in State v. Steven S. Newman*, No. 02C01-9707-CC-00266, 1998 WL 104492, at *1 n.2 (Tenn. Crim. App., at Jackson, Mar. 11, 1998), *no Tenn. R. App. P. 11 application filed*.

The procedural requirements for habeas corpus relief are mandatory and must be scrupulously followed. *Hickman v. State*, 153 S.W.3d 16, 21 (Tenn. 2004). The formal requirements for an application for habeas corpus relief are codified at Tennessee Code Annotated section 29-21-107, and a trial court "may properly choose to dismiss a petition for failing to comply with the statutory procedural requirements." *Hickman*, 153 S.W.3d at 21. In the case under submission, the Petitioner failed to adhere to the mandatory requirements for habeas corpus petitions. First, he failed to state that the "legality of the restraint has not already been adjudged upon a prior proceeding of the same character, to the best of the applicant's knowledge and belief" T.C.A. 29-21-107(b)(3) (2007). Next, he failed to follow the mandates of the statute by failing to attach a copy of his previous petition for habeas corpus relief or stating why a copy was not provided. T.C.A. 29-21-107(b)(4). These reasons alone are sufficient to justify the habeas corpus court's dismissal of the petition. Further, as previously stated, a habeas corpus court may under these circumstances summarily dismiss a petition without further hearing or the appointment of counsel.

Notwithstanding its procedural deficiencies, the petition also fails to state a cognizable claim for habeas corpus relief. In our view, the Petitioner's claim that he was under heavy sedation at the time of his guilty plea hearing and did not recall the events that occurred at that time addresses the voluntariness of his guilty plea. Because challenges to the voluntariness of a plea render a judgment merely voidable as opposed to void, the Petitioner's claim is not subject to attack through a petition for a writ of habeas corpus. See *Passarella*, 891 S.W.2d at 627. The Petitioner's issues are without merit.

Therefore, upon due consideration of the pleadings, the record, and the applicable law, the Court concludes that the petition was properly dismissed. Accordingly, the State's motion is

granted. The judgment of the trial court is affirmed in accordance to Rule 20, Rules of the Court of Criminal Appeals.

ROBERT W. WEDEMEYER, JUDGE